IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8580 of 1996

with

SPECIAL CIVIL APPLICATION No 10116 of 1996

With

SPECIAL CIVIL APPLICATION NO.476 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 and 2 Yes
3 to 5 No

GUJARAT MAZDOOR SABHA
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 8580 of 1996

DR MUKUL SINHA for Petitioner
Mr.K.N.Shastri and Mr.D.A.Bambhania,
learned Addl.G.P.for the respondent No.1
SINGHI & BUCH ASSO. for Respondent No. 2

2. Special Civil Application No 10116 of 1996

Mr.K.S.Nanavati, senior advocate with
SINGHI & BUCH ASSO. for Petitioner
Mr.K.N.Shastri and
MR DA BAMBHANIA,learned Add.G.P.
for Respondent Nos.1 to 3
Mr.B.V.Lathia for respondent No.4
Dr.Mukul Sinha for respondent No.5
Mr. N.R. Shahani for respondent No.6

3. Special Civil Application No.476 of 1997

Mr.N.R. Shahani for the petitioner
Mr.K.N.Shastri and Mr.D.A. Bambhania, learned Addl.G.P.
for the respondent No.1.
Singhi & Buch Asso. for respondent No.2
Mr. Kamal Trivedi for respondent No.3

CORAM : MR.JUSTICE M.R.CALLA
Date of decision: 06/03/98

COMMON ORAL JUDGEMENT

1. In two out of these three Special Civil Applications challenge is to the Notification dated 18.10.96 issued by the Labour & Employment Department of the Government of Gujarat in exercise of the powers conferred by sub-section (1) of S.10 of the Contract Labour (Regulation and Abolition) Act, 1970 whereby the system of employment of contract labour in the establishment of the Indian Farmers Fertilizer Co-operative Ltd., Kalol Unit, District - Mehsana (which will be hereinafter referred to as 'IFFCO') have been abolished in the Processes /operations/works/activities i.e. (1) stacking of filled up urea bags on the platform after manufacturing process is over and pending loading into the railway wagons or trucks, (2) collecting, bagging and standardizing spilled urea and hopper flour etc., (3) handling of spilled material and attending to cleaning of bagging flour, reclaim machines etc., and (4) general cleaning. Gujarat Mazdoor Sabha as well as IFfCO both are aggrieved against this notification dated

18.10.96 and, therefore, Special Civil Application No.8580 of 1996 has been filed by the Gujarat Mazdoor Sabha raising a grievance that the contract labour, which has been abolished for the process/activities of stacking, should also have been abolished in respect of the activity of loading and unloading. IFFCO has filed Special Civil Application No.10116 of 1996 raising the grievance that the reasoning which applies for exclusion of loading and unloading from abolition of contract labour applies to the stacking process/activity also and, therefore, the contract labour in stacking as well as the other 3 activities should not have been abolished. The third Special Civil Application No.476 of 1997 has been filed by Gujarat Mazdoor Panchayat seeking a direction against the IFFCO for absorption of the workers included in Annexure 'C' to this petition in the activities in respect of which the contract labour has been abolished vide aforesaid Notification dated 18.10.96. All these three matters were heard together as the common questions of law are involved based on identical facts and the consequences of the Notification dated 18.10.96 and, therefore they are decided by this common judgment and order.

Special Civil Application No.8580 of 1996:

The petitioner - Gujarat Mazdoor Sabha has come with the case that in the year 1986 IFFCO Karmachari Sangh had raised an industrial dispute in respect of 86 workmen, who are engaged by IFFCO in the operation of loading and unloading of the urea bags. This reference was adjudicated by the Industrial Tribunal at Ahmedabad as Reference (IT) No.21 of 1987 and the Award was passed on 20.3.91 directing the IFFCO management to treat 56 out of 86 workmen as direct employees of IFFCO and pay them regular wages as are being paid to the direct employees of IFfCO. The Reference with regard to the other 30 workmen was rejected. IFFCO then filed Special Civil Application No.3916 of 1991 challenging the aforesaid Award of the Industrial Tribunal and this Special Civil Application is said to be pending. IFFCO Karmchari Sangh had also challenged the aforesaid Award with regard to the rejection of the reference in respect of the other 30 employees through Special Civil Application No.2602 of 1992 and the same is also said to be pending. In the year 1984 IFFCO Karmachari Sangh had also moved the appropriate Government for abolition of contract labour system under S.10 of the Act in the operation of the loading and unloading etc. of the urea bags in IFFCO and also for certain other operations. This grievance raised by it was referred as Reference No.3 of 1984 before the

State Advisory Board constituted under S.10 of the Act. The State Advisory Board also gave its recommendations to the State Government sometime at the end of the year 1986. It is then stated by the petitioner - Gujarat Mazdoor Sabha that in 1995 the workmen who were concerned with the IFfCO, became members of the Gujarat Mazdoor Sabha and Gujarat Mazdoor Sabha then gave a notice to the Secretary of the Labour & Employment Department on 14.8.95 stating therein that the Advisory Board had concluded the hearing way back in 1986 and it also sent its report to the Government for further action, but these recommendations had not been acted upon. The petitioner - Gujarat Mazdoor Sabha then filed a Special Civil Application No.8686 of 1995 praying for a direction against the Government to decide the application for abolition of contractor labour system within a definite time frame work and the High Court decided this Special Civil Application No.8686 of 1995 on 17.11.95 and the State Government was directed to decide pending Application under S.10 of the Act within a period of 4 weeks from the date of the order being served upon the respondent State of Gujarat. It is only thereafter that the pending Application being Reference No.3 of 1984 was decided and the Notification dated 27.12.95 was issued. IFFCO has then challenged this Notification dated 27.12.95 through Special Civil Application No.423 of 1996 and the Gujarat Mazdoor Sabha - the present petitioner had also challenged the said Notification through Special Civil Application No.3066 of 1996 with regard to the exclusion of the operation of the loading and unloading of urea bags from the prohibited list. Both these Special Civil Applications i.e. Special Civil Application No.423 of 1996 and Special Civil Application No.3066 of 1996 were disposed of by a common consent order dated 1.7.96 directing the State Government to consider afresh the issue of prohibiting contract labour system and the contention of the petitioner - Union in respect of the prohibition of the loading and unloading activities which was excluded by the Government from the prohibited list. Under the Court's order dated 1.7.96, as aforesaid, the Government was directed to decide the matter before 16.9.96 and the IFFCO was directed to continue with the same labour contractor . The time limit was then extended upto 15.12.96 for finalising the decision by the Government and the direction, which had been given to the IFFCO to continue with the same labour contractor was also extended till 31.12.96. The petitioner - Gujarat Mazdoor Sabha then drawn the attention of the Government vide representation dated 9.8.96 to the relevant facts regarding the operation of the loading and unloading of urea bags and pointed out

that this activity could not be separated from the activity of stacking of urea bags on the platform and that these activities form the part of a single operation. The petitioner - Union's case is that the IFFCO itself had admitted this fact in their written reply before the Advisory Board. Thereafter, the Notification dated 18.10.96, which has been placed on record as Annexure 'VI', was issued by the Government abolishing the contract labour system in the activities of stacking up the urea bags on the platform, but the same has not been abolished in respect of loading and unloading of the urea bags in the railway wagons and trucks. The petitioner Gujarat Mazdoor Sabha has challenged this Notification dated 18.10.96 insofar as the Notification does not seek to abolish the contract labour system in the activity of loading and unloading and a grievance has also been raised that the petitioner Union was not given any opportunity to be hard before the Advisory Board. The pleadings include (1) Special Civil Application and the documents etc. filed with it, (2) affidavit-in-reply on behalf of respondent No.2 -IFFCO dated 2.12.96 by one Shri K.Bhaskaran, Manager (Personnel and Administration) with documents enclosed therewith, affidavit-in-rejoinder dated 16.12.96 filed by one Shri Chhakkan Khan, a member of the petitioner - Union and an affidavit dated 8.4.97 filed by the President of the petitioner - Union.

Special Civil Application No.10116 of 1996

IFFCO, Kalol Unit has has filed this Special Civil Application against the very same Notification dated 18.10.96 raising the grievance that contract labour system should not have been abolished for any of the four activities and further that in any case, the reasoning, on which the loading and unloading has been excluded, equally applies to the activity of stacking of urea bags on the platform and, therefore, there was no justification whatsoever to abolish the contract labour system for the purposes and activities of stacking as also the other three activities included in the impugned Notification dated 18.10.96 and IFFCO has also raised a grievance that hearing was not offered to it. The pleadings in this Special Civil Application includes, (1) Special Civil Application and the documents filed alongwith it,(2) Additional affidavits dated 24.2.97 and 8.4.97 filed by Shri K.Bhaskaran, Manager (P & A) of IFFCO alongwith documents.

Special Civil application No.476 of 1997

Gujarat Mazdoor Panchayat has filed this Special Civil application with the prayer for absorption of its 67 workers included in Annexure 'C' in the activities enlisted in the Notification dated 18.10.96 and to treat all these workmen as the direct workmen of IFFCO from the date of their entry in the service etc. as has been prayed in prayer clause (B) and (C) of para 9 of this Special Civil Application. It may be mentioned that on 1.4.97 the prayer made in clause (A) under Para 9 had been given up by the learned counsel Mr. Shahani and rightly so for the obvious reason that this Court can not declare the judgment of any co-ordinate Bench to be ineffective. Prayer made in Clause (D) under para 9 hardly needs any consideration wherein it has been prayed that this matter may be referred to Division Bench in case it is felt that the first prayer is required to be examined. This Court is, therefore, concerned only with regard to the prayers made in clauses (B) and (C) only. The prayers made in clauses (E), (F) and (G) are only with regard to further reliefs deemed just and proper by the court, cost and interim relief respectively. The pleadings in this Special Civil Application include (1) Special Civil Application and the documents filed alongwith it, affidavit-in-reply dated 24.2.97 filed by one Shri K. Bhaskran, Manager (P & A) of IFFCO, affidavit-in-reply dated 12.3.97 filed by one Shri B.D.Dhakan, Proprietor of respondent No.3.

Besides the pleadings in the form of petitions and affidavits and the documents, as have been referred to with regard to each of these 3 petitions, the learned counsel for the parties have also referred to certain other papers, which were passed on across the table and the same are also available.

2. From both the sides, the matter has been argued to show as to what is the activity of stacking of the urea bags on the platform before they are loaded into the railway wagons or trucks and what is the activity of loading and unloading. The case of both the sides is the same inasmuch as the petitioner - Union as well as IFFCO have contended that stacking as well as loading and unloading is one composite process. In Para 5 (a) of the Special Civil Application No.8580 of 1996 the petitioner - Union has stated that the operation/work of stacking urea bags on the platform and loading of such urea bags to the wagons/trucks is a single operation and this aspect is clearly admitted by the respondent No.2 i.e. IFFCO in their written statement before the Chairman of the State Advisory Board on 25.5.85. The submission of IFFCO, as was made in para 6 of such written statement

under the heading 'Loading of Fertilizer for despatch All over the country' has been reproduced in the following words:

"In our factory regular workmen are filling up and stitching the bags and afterwards it is dropped mechanically on the platform from where this bags are loading in the railway wagon or trucks. This loading of urea bags is done by the contractor. Normally wagons or trucks are not available on regular basis. Our plant operation is continuous. If railway wagon and trucks are not available then this filled up bags are stacked at the platform till wagons/trucks are available....." The IFFCO has also stated in para 1.07 of Special Civil Application No.10116 of 1996 that stacking is part of loading activity because it depends on loading. Thus it can be said that the operation of stacking and loading are composite and cannot be separated from each other. In this context, the case of the IFFCO is that the stacking operation on the platform is highly erratic and not of perennial nature. After the urea prills are manufactured they are transferred to the Silo through a conveyor belt for storage in loose form. The capacity of the Silo is 30,000 M.T. Whenever the wagons/trucks arrive at the loading platform, the loose urea is brought from the Silo through reclaim machine conveyor belt to Hopper situated at Bagging floor located on the first floor. The urea is then packed in bags, each weighing 50 kg. with weighing-cum-bagging machine and stitched with stitching machine. The bags are then dropped mechanically through chutes and received on the platform on the ground floor. Depending upon availability of wagons/trucks, urea is bagged directly and transferred on the platform through the above chute. There are six packers for bagging of urea. These packers are operated as per the need and depending upon the availability of the quantum required for loading of urea in trucks/wagons. The wagons/trucks are then loaded with these bags. The arrival schedule of wagons/trucks is very irregular and erratic. The time schedule differs according to the type of wagons to be loaded as supplied by the Railways either on the Broad Gauge Line or Meter Gauge Line and such time schedule also depends on the capacity of each wagon. In the Factory at Kalol the manufacturing process of the urea plant is continuous and urea is transferred from urea plant to silo. The manufacturing process for production of urea is over as soon as urea product is out of urea plant and, therefore, according to IFFCO the contractor is engaged for loading jobs after the manufacturing process is over and the activity of loading falls outside the purview of

manufacturing process. That there is no loading operation during the period of shutdown as well as when wagons/trucks are not available and at that time there is no alternative job for the workers during that period. There are no fixed timings for the availability of Railway wagons and trucks and the stacking operation depends upon loading and unloading operation and the loading and unloading operation can by no stretch of imagination be held to be activities of a perennial nature or activities wherein sufficient work is available to employ permanent employees. On the other hand, the Gujarat Mazdoor Sabha's case is that the manufacturing process of urea is continuous and the IFFCO produces 1200 MT of urea per day through out the 365 days. The urea is packed and stitched in the standard bags and the packed bags weigh 50 Kg. and thus per day 24000 bags of urea is produced. The despatch of the urea bags are done either by railway or trucks to different destinations in the country and the loading work is carried out by around 130 workmen under the so called contract labour system in three shifts round the clock for all the seven days in the week. On an average, each worker is paid around Rs.1300/- per month. Union's case is that each workman has to load/stack 400 to 450 bags per shift. For moving one bag, the workman is paid 17 Ps. The production capacity of IFFCO is 1200 MT of urea per day which is equivalent to 24000 bags per day. IFFCO, however, produces 1450 MT per day i.e. 29000 bags per day. At present IFFCO employs 150 workers for the work of stacking/loading per day spread over three shifts. Bagging and stitching machines (8 in number) employ two permanent workmen per machine per shift. The work of bagging and stitching are directly related to the work of stacking and loading since immediately after stitching, the bag is dropped through the chute to be either stacked or loaded. In case the stacking or loading work is stopped, the stitching work also has to be stopped, otherwise the stitched bags, which are dropped at the rate of 11 per minute, jams the chute. Neither of the operations are stopped and cannot be stopped since per day around 24000 to 29000 bags are to be stitched and moved out through the chute. The petitioner - Union having so averred in the affidavit dated 8.4.97 has also given the details with regard to the wagon loading for the months of October, November and December 1995 and it has been stated that in October 1995, 1179359 bags were produced and loaded by trucks or wagons averaging 38043 bags per day as against the production capacity of 24000 bags per day. In the month of November 1995, the average has been given to be 41142 bags per day and in the month of December, 1995 it has been given out as 35998 bags per

day. Dr. Sinha has submitted that the actual production is about 10000 bags higher than the production capacity of 24000 bags per day. IFFCO on its side has filed statement showing the shift wise loading of the urea in wagons for the month of January 1995 onwards and from these statements it has been tried to be shown that there are many shifts when there is no loading of urea in the wagon and that how drastically the work card vary. The statement has also been filed by IFFCO to show the details of indents placed for the supply of railway wagons with Railways and the supply thereof to IFFCO by the Railways during the period between 1.4.95 to 31.3.96.

3. Apart from the submissions, as aforesaid, on behalf of IFFCO reliance has been placed on AIR 1972 SC 1942 (Vegoils (P) Ltd. v. The Workmen) on the point that if the work for which contract labour is employed is incidental to and closely connected with the main activity of the industry and is of a perennial and permanent nature, then only the abolition of contract labour would be justified and where the facts show that there is a drastic variation in the nature of work that has to be done by the contractor regarding loading and unloading of the wagons and trucks and that in other similar establishments also the work is not done by regular workmen, the work cannot be said to be of permanent or perennial nature and, therefore, direction for the abolition of the contract labour in respect of loading and unloading could not be issued, although in this case, in the ultimate analysis the Court had come to the conclusion that in the establishment carrying business of manufacturing edible oils, soap etc., feeding of hoppers was an essential part of the industry, the work being of perennial nature, could be done by permanent employees and as such the direction to abolish the contract labour was held to be valid. The learned counsel for IFFCO has submitted that from the materials placed on record, it is quite clear that the work of loading and unloading is not a work of perennial nature and that there is a drastic variation in the nature of the work. In this case, the matter came up before the Supreme Court by way of Special Leave directed against the Award passed by the Industrial Tribunal, which has decided upon the demand of abolition of contract system. The Industrial Tribunal had the advantage of coming to the conclusion on the basis of the evidence. In the facts of the present case, what is assailed before this Court is Notification issued by the Government under the provisions of the Act for the purpose of abolition of contract labour and it cannot be said in the facts of the present case that there was no material before the

Government to consider as to whether the work of stacking and loading and unloading was a work perennial in nature or not. In the present case, the Union says that contract labour also should have been abolished with regard to the activity of loading and unloading when it was abolished for the purpose of stacking and the IFFCO says that if it is not abolished for loading and unloading why it has been abolished for stacking.

4. On this aspect of the matter, I have considered the material, which has been placed on record by both the sides and the only question to be seen is as to whether the reasoning which applies to stacking shall also apply to the case of loading and unloading or not. It is clearly discernible that the IFFCO is undertaking the manufacturing of the urea and so far as the process of manufacturing urea and the subsequent stacking and the loading and unloading activity are concerned, it is the common case of the parties that it is a composite process. From the data which has been placed on record with regard to the production and further activities, it can be safely said that stacking as well as loading and unloading is a composite process, is a work of perennial nature and it cannot be said to be incidental in the process of manufacturing urea. Besides this, the position has to be examined within the scope of the provisions itself and the Legislature has not left it open to embark upon any inquiry in this regard because it is provided in S.1(5)(b) that if a question arises whether the work performed in an establishment is of intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final. The explanation has been added thereunder which says that for the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature i.e. if it was performed for more than one hundred and twenty days in the preceding twelve months; or if it is of a seasonal character is performed for more than sixty days in a year. Mr. Shahani has placed strong reliance on this contention raised by him with reference to S.1(5)(b) and the explanation added thereunder coupled with the explanation added at the end of S.10 and the explanation below S.10 reads as under:-

"If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government therein shall be final"

It is ofcourse true that on the basis of the contents of the Notification it can not be said as to whether the Government had taken any such decision as to whether activity of stacking, loading or unloading was the work of a perennial nature or not, but the fact remains that under the explanation below S.1(5)(b) it has been clearly mentioned that the work performed in an establishment shall not be deemed to be of an intermittent nature, if it was performed for more than one hundred and twenty days in the preceding twelve months, or it is of a seasonal character and is performed for more than sixty days in a year. Therefore, even if it is found that the contention, which has been raised on the basis of the explanation below S.10, it is not considered in absence of any positive fact as to whether the Government itself had taken any such decision with regard to the work being of perennial nature or not and also taking into consideration the fact that if the contention based on the explanation below S.10 is taken to be the basis for considering the grievance raised by both the sides, it would boomerang against the petitioners in both the cases inasmuch if it is taken that merely because stacking has been included in the Notification abolishing contract labour, it should be presumed that the Government found the activity of stacking to be of a perennial nature and because loading and unloading had not been included, the Government had taken a decision that it is not a work of perennial nature and the same would, therefore, lead us nowhere for the purpose of adjudicating the rival contentions raised by the petitioner - Union as well as IFFCO because in that case, the decision as to whether the work is of a perennial nature or not with regard to stacking as well as loading and unloading as has been taken by the Government has to be taken to be final. What is most unfortunate in the facts of this case is that the Government itself, which was the author of the impugned notification, has not taken the challenge thrown to this Notification seriously and it has not even cared to file any reply in any of these matters and both the parties have been left to make out their own case and no assistance has been given by filing a return or any other document. The court is, therefore, left to consider the question only with reference to the explanation below S.10 and S.1(5)(b) as has been raised by Mr.Shahani. On the pleadings and the material, which has been relied upon by the IFFCO itself, it can be safely held that the activity of stacking as well as loading and unloading has been performed for more than 120 days in the preceding twelve months and further that even if these activities are taken to be of seasonal character, the same has been certainly performed for more than 60 days in a year. It

has not been shown by pleading or otherwise that in a year the activity of stacking , loading and unloading was performed for any period short of 60 days or that it was performed for less than 120 days in the preceding 12 months. Therefore, on the facts of this case, examined in the light of the explanation below S.1(5) it is clearly made out that either the work of stacking or the work of loading and unloading could not be taken to be a work of intermittent nature or of seasonal character, rather it is clear that this composite activity is an activity of perennial nature. In AIR 1990 SC 532 (Sankar Mukherjee v. Union of India), the Supreme Court considered directly the activity of loading and unloading. In para 3 of this judgment, the Supreme Court has observed that, it is thus obvious that the job of loading and unloading of bricks from wagons and trucks in the Brick Department has been specifically excluded. The said action of the State Government was challenged under Article 32 of the Constitution of India by the affected workmen on the ground that the petitioners had been subjected to hostile discrimination so much so that the workmen doing the same job in other departments and allied jobs in the same department had been rescued from the archaic system of contract labour whereas the petitioner had been singled out and left to be grinded under the pernicious effect of the primitive system of contract labour and this action was assailed by the petitioners in that case to be arbitrary, discriminatory and violative of Article 14 of the Constitution of India. In the case at hand before this Court, the argument of the petitioner Union is the same when they say that the employees working in loading and unloading activity has been discriminated qua the employees working in stacking activity. In the Supreme Court decision in Shankar Mukherjee v. Union of India (Supra) it was argued on behalf of the petitioner that the job of loading and unloading of bricks is allied and incidental to the job of stacking of bricks. The only difference in the Supreme Court decision and the present case before this Court is that before the Supreme Court, the material sought to be stacked and loaded and unloaded was bricks and in the case at hand they are urea bags. The Supreme Court, after due consideration, has observed in para 9 as under:-

"Even otherwise we fail to understand how the stacking of bricks is a job which is not incidental to loading and unloading. The purchase of bricks, transportation to the factory, unloading, stacking and use in the furnace are the jobs in one continuing process and it is difficult to accept that these jobs are not

incidental or allied to each other. That being so all the workmen performing these jobs are to be treated alike. On the same reasoning it cannot be said that the loader's job is not, and other jobs in the Brick Department are, of perennial nature."

This decision of the Supreme Court was sought to be distinguished by Mr. K.S.Nanavati by saying that the bricks were being brought to the Factory in the case before the Supreme Court as raw material and, therefore, the bringing of the raw material is certainly an activity in continuity because in absence of such material no further process with regard to manufacture can take place. This distinction, in the opinion of this court, is hardly a distinction, rather the distinction is wholly misplaced. Even if the urea bags are not the raw material, but are the materials which are manufactured by IFFCO, the question is that the activity of stacking as well as loading and unloading is an integral part of the whole process and it cannot be said that moment the urea is manufactured, the activity is over. Even after the manufacture of the urea, the activity of stacking of the bags and the loading and unloading thereof continues and the touch stone in such matters, as to whether they are work of perennial nature or not, would depend upon the question as to whether such activity or work has been undertaken for a period of less than 120 days in the preceding year or not and even when there is a work of seasonal character,it has to be conducted for a period short of 60 days in an year. No doubt in the explanation below S.1(5)(b) it has been stated that the explanation was given for the purpose of this sub-section and it has nothing to do with the applicability of the Act to the establishment. Nevertheless the guidelines can certainly be taken from the intention of the Legislature in the Scheme of the very same Act for the purpose of considering the question as to whether a particular activity is only an activity of intermittent nature or of seasonal character or perennial activity. I have, therefore,no hesitation in holding that the activity of stacking as well as loading and unloading are the activities of perennial nature and since it is the common case of both the sides that the same reasoning should apply whether it is case of stacking or activity of loading and unloading, this Court is of the opinion that the exclusion of the activity of loading and unloading while including the stacking was unreasonable and the same is in violation of Article 14 of the Constitution and not that because loading and unloading was excluded, stacking also should have been excluded, lest it would be a case of doing violence to the very object for which the

Contract Labour (Regulation and Abolition) Act 1970 was enacted and also to the cherished object of equality and reasonableness as envisaged by Article 14 of the Constitution.

5. Thus the exclusion of loading and unloading activity from the purview of the abolition of the contract labour in the establishment of IFFCO while abolishing the contract labour of stacking, cannot be sustained in the eye of law and the same is held to be arbitrary, contrary to the Scheme of the Act as also Article 14 of the Constitution of India.

6. So far as the other three activities are concerned, apart from the fact that no challenge was urged at the time of argument with regard to the activities mentioned at Item Nos.2 to 4 of the Schedule appended to the impugned Notification dated 18.10.96, it goes with the very nature of these activities with regard to the collecting, bagging and standardizing spilled urea and hopper flour etc., handling of spilled material and attending to cleaning of bagging floor, reclaim machines etc. and the general cleaning that these activities cannot be of any intermittent or seasonal character. Nor these activities can be said to be erratic and they are certainly perennial in nature because without the process of collection, bagging and standardizing spilled urea and handling of spilled material and cleaning of bagging floor and reclaim machine and general cleaning, Unit can not even function. These things are part and parcel of the daily activity because they are directly related to the task which has been undertaken by the Unit.

7. The learned counsel appearing for IFFCO in Special Civil Application No.10116 of 1996 then argued that the power, in exercise of which the impugned Notification had been issued, is quasi legislative and further that even if the Court comes to the conclusion that the impugned Notification is invalid or unreasonable or discriminatory because the activity has been wrongly excluded, this Court can at the most strike down and set aside the notification but it can not give any positive direction to include any particular activity. In support of this contention, reliance was placed on AIR 1992 SC 435 (Chandigarh Administration and another v. Manpreet Singh and others) in which the Supreme Court ruled that writ court cannot assume the role of rule making authority, cannot also act as an appellate authority over rule making authority and even if the rule was found to be discriminatory, the only course open to the High Court was to strike down the rule and direct the rule making

authority to reframe it. It may be stated that the Supreme Court in this matter was concerned with a case in which 5 percent of the seats were reserved in favour of sons/daughters/spouses of Military/Para-Military personnel. The Punjab Engineering College (a College run by the Chandigarh Administration and affiliated to Punjab University) reserved 15 seats in favour of sons,daughters and spouses of Military/ Para-Military personnel. The prospectus contained the rule governing the admission. The children and spouses of defence personnel who were awardees of gallantry decorations of Paramvir/Mahavir/Vir Chakra in person or posthumously were placed in category (1). The Awardees of Ashok Chakra, Kirti Chakra or Shaurya Chakra were not included in the category and the High Court felt satisfied that the Rule was discriminatory and bad for the reason of not including the Ashok Chakra etc. In this context the Supreme Court held that the only course open to the High Court was to strike down the offending rule and it could have also directed the authorities to reframe the rule and to make admission accordingly. One fails to understand as to how this reasoning would apply in the facts of the present case. Whether the gallantry awards such as Ashok Chakra, Kirti Chakra or Shaurya Chakra are at par with Paramvir Chakra, Mahavir Chakra or Chakra in person or posthumously or not is certainly a matter which could not be decided by the High Court. In the facts of the present case, it stands determined by the very provisions of the Act and the Supreme Court has also held that the activity of loading and unloading is at par with that of stacking and the exclusion of such activity is violative of Article 14.

8. In any case, a direction can certainly be given to the appropriate Government for considering the question of inclusion of the activity of loading and unloading in the items of activities for which the contract labour is to be abolished in the light of the observations made in this judgment and, therefore, I need not further dilate on this aspect of the matter.

9. Although on behalf of both the sides i.e. Union as well as IFFCO the argument was raised that opportunity was not offered, but it may be straightaway observed that it is certainly a case of quasi legislative nature and it was not a quasi administrative or quasi judicial proceedings and on this ground the Notification can not be quashed. Reference in this regard may be made to 1994 (1) G.L.H. 94 (South Gujarat Textile Processors' Association v. State of Gujarat), 1995 (1) G.L.R. 143

(Alembic Chemical Works Co.Ltd. v. State), and AIR 1988 SC 1737 (State of U.P. v. Renusagar Power Co.).

10. The upshot of the discussion and adjudication, as aforesaid, is that while Special Civil Application No.10116 of 1996 filed by IFFCO fails, Special Civil Application No.8580 of 1996 filed by the Gujarat Mazdoor Sabha succeeds in part to the extent that it is held that non inclusion of the activity of loading and unloading in Notification is held to be illegal and the State of Gujarat is directed to re-consider the question of including the activity of loading and unloading, in respect of which the system of contract labour is to be abolished (in the light of this judgment) through the Notification and proceed in accordance with law. After such re-consideration, if the system of contract labour is abolished with regard to the activity of loading and unloading, reliefs pursuant to that with regard to the concerned employees shall also relate back to the date on which the impugned Notification had been issued and such employees shall also be entitled to same benefits as were made available to the employees belonging to the activity of stacking etc. with all consequential benefits. It is further ordered that till such time the appropriate Government takes the decision afresh as directed above, no action shall be taken to the prejudice of the concerned employees and their status as obtaining today shall be maintained except for any disciplinary purpose and the respondent IFFCO shall ensure that their position, as obtaining today, is maintained by the concerned Contractor, who is working as the agent of the IFFCO. It is also directed that the exercise of re-consideration in the light of this judgment shall be undertaken at the earliest possible opportunity but in no case later than 30.4.98. Rule in Special Civil Application No.8580 of 1996 is made absolute accordingly with no order as to costs. Rule in Special Civil Application No.10116 of 1996 is hereby discharged and the interim order, if any, stands automatically vacated. No order as to costs.

11. Coming to the third Special Civil Application No.476 of 1997, it has been claimed that 67 workers included in Annexure 'C' working in the Departments for which the contract labour has been abolished by this Notification may be absorbed and they should be treated as direct employees of respondent No.2.

12. In para 8 of the reply filed on behalf of respondent No.2 i.e.IFFCO it has been stated that these employees have initiated proceedings before the Assistant

Labour Commissioner seeking a Reference for adjudication of the dispute with regard to their status and the said proceedings are pending before the appropriate authority and, therefore, it is not permissible for the petitioner Union to pursue two proceedings simultaneously on the same subject matter. Mr. Shahani appearing for the petitioner has submitted that the Reference had been sought by many employees including these 67 employees much prior to the issue of the Notification dated 18.10.96. He has submitted that so far as the present petition is concerned, he keeps the claim of these 67 employees to be confined to the consequences of Notification dated 18.10.96 and submits that the direction may be given for their absorption etc. as were given by the Supreme Court in the case of Air India Statutory Corporation Etc. v. United Labour Union and others etc. reported in 1996 (9) SCALE 70 : AIR 1997 SC 645. The part of the Judgment, as contained in para 67, on which strong reliance has been placed by Mr. Shahani,is reproduced as under:-

"It is true that the learned counsel for the appellant had given alternative proposal, but after going through its contents, we are of the view that the proposal would defeat, more often than not, the purpose of the Act and keep the workmen at the whim of the establishment. The request of the learned Solicitor General that the management may be left with that discretion so as to absorb the workman in the best manner favourable to the workmen cannot be accepted. In this behalf, it is necessary to recapitulate that on abolition of the contract labor system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from this perspective all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

13. In the facts and circumstances of this case, I deem it appropriate to direct the respondent No.2 to consider the case of the 67 employees included in Annexure 'C' firstly as to whether they have been working in the activity for which the contract labour system has been abolished by Notification dated 18.10.96 and as such all the employees, who are found to have been working in the activity for which the contract labour system has been abolished, may be considered for absorption so as to

treat them as the direct employees of the IFFCO in the light of the law laid down by the Supreme Court in 1996 (9) SCALE 70 (Supra). This exercise may be completed within a period of 3 months from today and the decision taken in this regard shall be communicated to the Gujarat Mazdoor Panchayat i.e. the present petitioner as well as the concerned employees. This Special Civil Application is, therefore, allowed in part to the extent, as aforesaid only and the Rule is also made absolute in the terms as aforesaid. No order as to costs.

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